IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 40 OF 2006

MR. PRADEEP JAIN ....Petitioner

Versus

THE STATE OF GOA THROUGH PUBLIC PROSECUTOR AND ANR ....Respondent

Mr. Shirish Gupte, Sr. Counsel with Mr. A. Khandeperkar and Advocate Anirudha A.S. Borkar for the petitioner.
Ms. Winnie Coutinho, GA for respondent no.1.
Mr. E.P. Badrinarayanan, Advocate for respondent no.2.

Coram:- N. A. BRITTO, J.

Date:- 9th February, 2007

P.C.

Heard learned Sr. Counsel on behalf of the petitioner and Shri E.P. Badrinarayan on behalf of the respondent.

2. The petitioner was prosecuted as an accused by the respondent undeer section 217(3) read with (5) of the Companies Act 1956. Process was issued against the petitioner by order dated 31.10.2002.

3. At the relevant time the petitioner had two fold remedies. The first by filing an application for recalling of process in terms of the Judgment of the Apex Court in K.M. Mathew (1992 (1) SSC 217). The second was by filing a revision under section 397 of the Code (Code of Cr. Procedure 1973). The petitioners chose not to avail either of the said remedies.

4. In February 2002, the petitioner filed an application raising the ground of limitation under section 468(2)(b) of the Code and the same was rejected by the learned Trial Court by order dated 5.9.2005. The petitioner again chose not to file any revision application against the said

order.

5. The petitioner has now invoked the extra ordinary juridiction of this Court under section 482 of the Code by application dated 04.09.06, with a view to assail the said two orders of the learned Judicial Magistrate First Class.

6. It is well settled that inherent power under Section 482 of the Code overrides other provisions but the remedy under it is not to be exercised when remedy under the Code or other statute is available. The revisional jurisdiction has been conferred concurrently on two Courts namely the Court of Sessions as well as this Court. As held by this Court in Dr. Mohan N. Bhawe v. M/s Travel Force (unreported Judgment dated 6.4.2005 in Criminal Misc. Application No.52/2005 and by Judgment dated 21/6/05 in B.K. Jain and others ((2005)(2) Bombay C.R.(Cri) 738, the petitioner ought to have approached the Court of Sessions in revision. As stated in the case of Jeetendra R. Deshprabhu v. Lamikant Yeshwant Parshekar and others (Criminal Revision Application No.28/2004 decided on 23.12.2004) after considering several decisions of this Court, it is the choice of Superior Court whether a Revision Petition is to be entertained by it or not by allowing the party to by-pass the inferior Court. When the petitioner has remedy by way of revision, there is no question of exercising extra ordinary remedy under section 482 of the Code. As stated by the Apex Court in the case of Zandu Pharmaceutical Works Limited v. Mohd. Sharafal Haque and another, [(2005) 1 SSC 122] exercise of power under section 482 is an exception and not a rule that is to be exercised ex debito justitia to do real and substantial justice for which the Court alone exists. There is nothing unusual or extraordinary for this Court to exercise revisional jurisdiction by by-passing the Court of Sessions.

7. The petitioner therefore shall be at liberty to approach the Court of Sessions in revision to assail, in case he so desires, the said orders dated 31.10.2002 and 5.9.2005 of the learned Magistrate.

8. Learned Sr. Counsel submits that the Sessions Court be directed to decide the issue on merits, by condoning the delay. I am not inclined to do so. The petitioner would be at liberty to file Revision Petition with an application for condonation of delay, in filing the same which the Sessions Court is bound to consider on merits.

In view of the above, Criminal Writ Petition is hereby dismissed, with liberty as aforesaid.

N. A. BRITTO, J.

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